

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

MARC ALLEN KILMER,

Plaintiff,
v.
**CIVIL ACTION NO. 3:12-CV-55
(JUDGE GROH)**

PERRY S. LAYNE, Deputy,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on March 13, 2013 [Doc. 36]. In that filing, the magistrate judge recommended that this Court dismiss the Plaintiff's 42 U.S.C. §1983 Complaint with prejudice as being barred by the applicable statute of limitations.

Pursuant to 28 U.S.C. §636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the plaintiff's right to appeal this Court's Order. 28 U.S.C. §636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d

91, 94 (4th Cir. 1984). Objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of being served with a copy of the same, pursuant to 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 72(b).

The docket reflects that service of the R & R was accepted at the Plaintiff's last known address, the Parkersburg Correctional Center, P.O. Box 072, 225 Holiday Hills Drive, Parkersburg, West Virginia, 26104, on March 20, 2013 [Doc. 37]. It appears that the Parkersburg Correctional Center attempted to forward the R & R to the Plaintiff at an address designated as "Salvation Army" in Parkersburg, but the R & R was returned to the Court marked "not deliverable as addressed" [Doc. 38]. Neither party filed objections to the R & R. However, the Plaintiff was made aware of his continuing duty to apprise the Court of his current address through the Court's Notice of General Guidelines for Appearing Pro Se in Federal Court [Doc. 6], which was accepted on June 25, 2012 [Doc. 10]. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation **[Doc. 36]** should be, and hereby is, **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, Defendant Layne's Motion for Summary Judgment **[Doc. 29]** is hereby **GRANTED**; Defendant Layne's Supplemental Motion for Summary Judgment **[Doc. 32]** is hereby **DISMISSED AS MOOT**; and this case is hereby **DISMISSED WITH PREJUDICE** and **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment for the Defendant.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to issue a certified copy to the *pro se* Plaintiff.

DATED: April 24, 2013.



GINA M. GROH
UNITED STATES DISTRICT JUDGE